

FISH and WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 12, 2015

Agenda Item: Annual Rule to close Bitterroot River for user safety at Supply Ditch

Division: Fisheries

Action Needed: Proposed

Time Needed on Agenda for this Presentation: 10 min

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Background: Around 2011, the Bitterroot River shifted its primary flow over the Supply Ditch Diversion on the Bitterroot River. Soon after, accidents were reported at the diversion. The diversion was signed to notify river users of the danger. But despite this and other education efforts, serious accidents continued, including one fatality in 2013. After this death, additional outreach (signs and newspaper articles) was implemented, and there were no more accidents in 2013. However, in early spring of 2014, more accidents occurred. On April 11, 2014, FWP initiated an emergency rule closure for a 5 mile section of the Bitterroot River for user safety. That decision was controversial. There are more signs now, and plans for other efforts to increase public awareness, but it is uncertain whether these attempts will be enough to improve safety at the diversion. Fund raising has started and we hope to modify the dam in the fall of 2015 or spring 2016 so that river users can safely pass the structure and irrigators can still get their water.

Public Involvement Process & Results: Public comment was taken on the emergency rule and there was a court petition. Opponents felt that FWP should allow individual users decide if it is safe or not, and to use it at their own risk rather than close the river. Other concerns included the lack of public comment prior to implementing the closure, the question of FWP authority to close a portion of the river without Commission approval, and the fact that since the danger was chronic and known, an emergency rule was not warranted.

Alternatives and Analysis: 1) Leave the river open and allow use to continue at boaters' own risk. This involves what we consider an unacceptable risk to public safety. 2) Solicit new public comment on an annual rule to possibly close the river when conditions warrant. This rule would allow timely decisions on closures to protect public safety.

Agency Recommendation & Rationale: Alternative 2, because it would satisfy much of the criticism of the process used via emergency rulemaking and may provide information and publicity needed to help keep the public safe.

Proposed Motion: I move that the Commission propose an annual rule outlining the conditions for the department to possibly close all or portions of the Bitterroot River between Woodside and Tucker FASs for reasons of public safety.